Supreme Court, U.S.
FILED
05-151 JUL 26 2005
OFFICE OF THE CLERK

No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 2004

LANCE K. MATHIS
AND
ROY C. WEST,
Petitioners,
v.
STATE OF OHIO,
Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court of Ohio

PETITION FOR WRIT OF CERTIORARI

ROBERT C. MEEKER *(Counsel of Record)*
Blakemore, Meeker & Bowler Co. L.P.A.
19 North High Street
Akron, Ohio 44308
330-253-3337
Counsel for Petitioners

QUESTIONS PRESENTED FOR REVIEW

1. Whether Ohio law meets the minimum standard of protection under the Fourth Amendment to the United States Constitution in analyzing factors necessary to establish probable cause to search a third party's dwelling in order to arrest an individual who entered said dwelling.

2. Whether a police officer may enter a dwelling without a warrant to question an individual based on reasonable suspicion.

3. Whether a police officer may effectuate an arrest in hot pursuit of an individual in a private home without probable cause to arrest.

TABLE OF CONTENTS

Page

QUESTION PRESENTED FOR REVIEW i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

OPINIONS BELOW vii

JURISDICTION viii

CONSTITUTIONAL PROVISIONS INVOLVED ix

STATEMENT OF THE CASE 1

A. Procedural History 1

B. Facts Presented at Evidentiary Hearing on Petitioners' Motion 7

REASONS FOR GRANTING THE WRIT 15

A. The Supreme Court of Ohio Has Departed from Relevant Decisions of this Court Regarding the Scope, Intention, and Policy Implications of the Fourth Amendment Relating to Warrantless Searches of One's

Home 16

B. By Allowing Police Officers to Enter Homes Without Prior Judicial Consideration of Arrest Warrants and Search Warrants, Police Officers Will Be Able to Justify Any Warrantless Search by Making After the Fact Determinations to Support Probable Cause or Exigent Circumstances 21

CONCLUSION 28

PROOF OF SERVICE 30

APPENDIX

TABLE OF AUTHORITIES

Page

FEDERAL CASES

1. *Adamson v. California*, 332 U.S. 46 (1964) 18

2. *Beck v. Ohio*, 379 U.S. 89 (1964) 21, 23

3. *Brinegar v. United States*, 338 U.S. 160 (1949) 22

4. *Carroll v. United States*, 267 U.S. 132 (1925) 22

5. *Gerstein v. Pugh* 420 U.S. 112 (1975) ..... , 21, 25

6. *Goldsmith v. United States*, 439 U.S. 913 (1978) 17

7. *Johnson v. United States*, 333 U.S. 10 (1948) 21

8. *Katz v. United States*, 389 U.S. 347 (1967) 18

9. *Mapp v. Ohio*, 367 U.S. 643(1961) 16

10. *Minnesota v. Olson*, 495 U.S. 91 (1990) .. 3, 25

11. *Payton v. New York*, 445 U.S. 573 (1980) 17, 18,

19

12. *Shadwick v. City of Tampa*, 407 U.S. 345 (1972) 22

13. *Silverman v. United States*, 365 U.S. 505 (1961) 18

14. *Steagald v. United States*, 451 U.S. 204 (1981) 17

15. *United States v. United States District Court*, 407 U.S. 297 (1972) 17

16. *United States v. Reed*, 572 F.2d 412 (1978) 26

17. *Texas v. Brown*, 460 U.S. 730 (1983) 24

18. *Wolf v. Colorado*, 338 U.S. 25 (1949) 16

19. *Wong Sun v. United States*, 371 U.S. 471 (1963) 1, 23, 26

STATE CASES

1. *State v. Apodaca*, 85 Or. App. 128 (1987) . 27

2. *State v. Stringfield* (Sept. 4, 1991), 9th Dist. No. 1991 (Ohio) 6

3. *State v. Kelly* (Sept., 24, 1993), 2nd Dist No. 3007 (Ohio) 6

4. *State v. Morgavi*, 58 Wash. App. 733 (1990) 27

FEDERAL STATUTES

28 U.S.C.A. §1257(a) viii

STATE STATUTES

1. Ohio Revised Code §2903.13 1

2. Ohio Revised Code§2921.31 1

3. Ohio Revised Code §2925.03 1

4. Ohio Revised Code §2925.11 1

UNITED STATES CONSTITUTION

1. Fourth Amendment to the United States Constitution ..... ix, 2-5, 15-21, 25, 28

2. Fourteenth Amendment to the United States Constitution ..... ix, 1,2, 5, 15

OPINIONS BELOW

1. Order, *State of Ohio v. Lance K. Mathis (A) and Roy C. West (B)*, Court of Common Pleas, Summit County, State of Ohio, Case No. CR-2004-01-0135, filed March 30, 2004. (Appendix A)

2. *State v. Mathis*, 2004 WL 2896471, unreported (9th Dist., Summit, Dec. 15, 2004). (Appendix B)

3. *State v. Mathis* (2005), 105 Ohio St.3d 1519 (Table). (Appendix C)

JURISDICTION

The judgment of the Ohio Supreme Court declining review of Petitioners' appeal was entered on April 27, 2005. Petitioners seek review of a judgment by the highest court in which a decision could be had and invoke this Court's jurisdiction under 28 U.S.C.A. §1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Section 1 of the Fourteenth Amendment to the United States Constitution provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

A. Procedural History

On January 20, 2004, Petitioner Roy C. West was indicted and charged with (1) assault, under §2903.13(A) of the Ohio Revised Code (R.C.), and (2) obstruction of official business, under R.C. §2921.31(A). As a result of the acts of Mr. West, Petitioner Lance K. Mathis was indicted and charged on January 20, 2004 with (1) trafficking in marijuana, under R.C. §2925.03(A)(2), and (2) possession of marijuana, under R.C. §2925.11(A).[1]

On February 6, 2004, Mr. Mathis filed a motion to suppress evidence based on an unlawful, warrantless entry and search of his home in violation of his rights under the Fourth and Fourteenth Amendments to the United States Constitution.[2] In the same pleading, Mr. West filed a motion to dismiss the indictment based on the unlawful, warrantless entry and search of Mr. Mathis' home and unlawful, warrantless arrest of Mr. West, who was an occupant of Mr. Mathis' home, in violation of Mr. West's rights under the Fourth and Fourteenth Amendments to the United States Constitution.[3]

---

[1]Indictment, Appx. __.

[2]Defendant Lance K. Mathis' Motion to Suppress Evidence and Defendant Roy C. West's Motion to Dismiss (Motion), Appx. __.

[3]Motion, Appx. __.

In their motions, Petitioners invoked their rights under the Fourth and Fourteenth Amendments to the United States constitution.[4] Petitioners also invoked their rights under Article I, Section 14 of the Ohio constitution, which is virtually identical, in substance, to the Fourth Amendment to the United States constitution.[5] They argued that the marijuana found in Mr. Mathis' home and the assault and obstruction of official business by Mr. West were the result of the unlawful, warrantless entry and search of Mr. Mathis' home and the warrantless arrest of Mr. West in Mr. Mathis' home.[6] Pursuant to an evidentiary hearing on Petitioners' motions, the trial court, on March 30, 2004, sitting in the Court of Common Pleas, Summit County, State of Ohio, granted both motions.[7] The trial court held[8] –

> With regard to the instant matter, none of the exceptions to the warrantless entry of the residence are applicable. Specifically, the Court finds that neither the hot pursuit nor the exigent circumstances are applicable.
>
> Prior to entering the Defendants' residence, neither officer was aware of whether any violation of law ever

---

[4]Motion, Appx. __.

[5]Motion, Appx. __.

[6]Motion, Appx. __.

[7]Order, Appx. __.

[8]Order, Appx. __.